

**Letter of Findings: 01-20120623
Indiana Individual Income Tax
For The Tax Years 2009, 2010, and 2011**

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ISSUES

I. Indiana Individual Income Tax – Residency.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; [45 IAC 3.1-1-21](#); IC § 6-8.1-5-1; [45 IAC 3.1-1-22](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayers protest the Department's proposed assessment of Indiana individual income tax for the 2009 through 2011 tax years.

II. Tax Administration – Underpayment Penalty, Negligence Penalty, and Interest.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; IC § 6-3-4-4.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the underpayment penalty, the negligence penalty, and interest.

STATEMENT OF FACTS

Taxpayer files joint federal and state income tax returns with his spouse. For the sake of convenience, this Letter of Findings will variously refer to Taxpayer or Taxpayers. For the years at issue, Taxpayers filed Indiana IT-40PNR (Indiana Part-Year or Full-Year Nonresident) returns. A Department's audit of Taxpayer's returns found that Taxpayer had the indicia of a full-time Indiana resident and assessed Taxpayers additional Indiana individual income tax, penalty and interest calculated based on the income Taxpayers reported on their federal returns for the years at issue. Taxpayer protested the assessment of additional tax and penalty. An administrative hearing was held and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax – Residency.

DISCUSSION

Taxpayers protest the Department's proposed assessment of Indiana individual income tax for the 2009 through 2011 tax years. The Department based its determination on the grounds that Taxpayer had an Indiana residence, an Indiana driving license, an Indiana registered vehicle, and was registered to vote in Indiana.

As a threshold issue, all tax assessments are prima facie evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). The Internal Revenue Code requires taxpayers to report and pay their federal income tax when their gross income exceeds a certain amount. For state income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns and, thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. Thus, IC § 6-3-1-3.5(a) provides the starting point for determining the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

In the case of corporations and nonresidents, IC § 6-3-2-2, addresses what constitutes "adjusted gross income derived from sources within Indiana." Specifically, section (a) outlines what would be subject to Indiana income tax:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

"Resident" is defined in IC § 6-3-1-12:

The term "resident" includes (a) **any individual who was domiciled in this state during the taxable year**, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state. **(Emphasis added)**. IC § 6-3-1-13 states, "The term 'nonresident' means any person who is not a resident of Indiana."

[45 IAC 3.1-1-21](#) further states:

An Indiana resident is:

- (a) Any individual who was domiciled in Indiana during the taxable year, or
- (b) Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state; or
- (c) Any estate of a deceased person defined in (a) or (b) [subsections (a) or (b) of this section], or
- (d) Any trust which has a situs within this state. **(Emphasis added)**.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

The Indiana Supreme Court in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927) addressed the issue of whether a taxpayer, Mr. Walton, had a domicile in Indiana and whether his intangible property was subject to certain Indiana taxes because Mr. Walton had moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefit of his wife's health. The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including insurance policies, mortgages, leases, contracts, and other negotiable instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to Indiana tax. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case . . .

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.** Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1317-18. (Internal citations omitted) (**Emphasis added**).

As discussed above, "resident" includes any individual who was domiciled in this state during the taxable year. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." *Bayh*, 521 N.E.2d at 1317-18.

For years Taxpayers had been filing Indiana income tax returns. In 2005, Taxpayer was relocated abroad for a few years. Taxpayer's spouse and children remained in Indiana. Taxpayers retained their residence in Indiana and continued to file Indiana income tax returns.

In late 2008, Taxpayer returned to the United States. Since then and including the years at issue, Taxpayer first took employment in Texas and then in D.C. while his family remained in Indiana at their residence in Indianapolis. Taxpayer purposely retained his Indiana driver's license, his Indiana voter registration, and his vehicle registration in Indiana as an expression, according to him, of his commitment to the state. While Taxpayer rented an apartment in Texas, he made frequent weekend trips back to Indiana to be with his family. During this time Taxpayers filed IT-40PNRs reporting modest Indiana income, but significantly not including Taxpayer's high income on the Indiana returns. Taxpayer was under the impression, with the advice of counsel, that because his income was earned in Texas it did not have to be reported in Indiana. Texas does not impose an income tax on income earned in Texas, so Taxpayer believed he was reporting correctly.

As the statement of law and discussion of case law above demonstrate, apart from the facts that establish a person's domicile, domicile is also a state of mind. Taxpayer's facts and circumstances clearly illustrate that Taxpayer's domicile remains in Indiana. Taxpayer may have chosen a "commuter" lifestyle, as he explains, in order to "secure employment at a level of compensation commensurate with [his] professional credentials"; however, all the indicia of where an individual chooses to be counted point to Indiana as Taxpayers' domicile. Taxpayers have given no indication that they intend to change their domicile to another state. To the contrary, Taxpayers have chosen to maintain their ties to Indiana.

In short, given the totality of the circumstances, in the absence of other supporting documentation, Taxpayers were domiciled in Indiana during 2009, 2010, and 2011. Therefore, Taxpayers should have continued to file Indiana income tax returns during 2009, 2010, and 2011.

FINDING

Taxpayers' protest is respectfully denied.

II. Tax Administration – Underpayment Penalty, Negligence Penalty, and Interest.

DISCUSSION

Taxpayers protested the imposition of the underpayment penalty, the negligence penalty, and interest.

A. Underpayment Penalty.

The Department imposed an underpayment penalty because Taxpayers failed to timely remit their estimated payments of adjusted gross income tax under IC § 6-3-4-4.1(b).

IC § 6-3-4-4.1, in relevant part, states:

(a) Any individual required by the Internal Revenue Code to file estimated tax returns and to make payments on account of such estimated tax shall file estimated tax returns and make payments of the tax imposed by this article to the department at the time or times and in the installments as provided by Section 6654 of the

Internal Revenue Code. However, the following apply to estimated tax returns filed and payments made under this subsection:

(1) In applying Section 6654 of the Internal Revenue Code for the purposes of this article, "estimated tax" means the amount which the individual estimates as the amount of the adjusted gross income tax imposed by this article for the taxable year, minus the amount which the individual estimates as the sum of any credits against the tax provided by [IC 6-3-3](#).

...

(b) Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by [IC 6-8.1-10-2.1\(b\)](#).

Upon review, Taxpayers' estimated tax payments for the years 2010 and 2011 were sufficient to meet the requirements of IC § 6-3-4-4.1. Given the totality of the circumstances, this penalty is waived.

B. Negligence Penalty.

Taxpayers also protested the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2\(b\)](#) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayers provided sufficient documentation to demonstrate that their failure to pay tax was not due to negligence.

C. Interest.

Taxpayer protests the imposition of interest. Under IC § 6-8.1-10-1(e) interest cannot be waived by the Department.

FINDING

Taxpayers' protest of the underpayment penalty and negligence penalty are sustained. Taxpayer's protest of the imposition of interest is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayers' protest of the Department's proposed assessment of additional

Indiana individual income tax is denied. Taxpayers' protest of the underpayment penalty and negligence penalty is sustained. However, Taxpayer's protest of the imposition of interest is denied.

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